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EXAMINER

MACKEY, JAMES P

ART UNIT PAPER NUMBER

1722

DATE MAILED: 10/03/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/864,497

Applicant(s)

DEAN ET AL.

Examiner

James Mackey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 16-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election without traverse of Group I, claims 1-11 and 16-23 (and cancellation of non-elected claims 12-15) in Paper No. 3 is acknowledged.

2. The abstract of the disclosure is objected to because the abstract should present only a single paragraph. Correction is required. See MPEP § 608.01(b).

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the longitudinal slots formed around the fiber bore (claims 11 and 23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. Claim 20 is objected to because of the following informalities: the claim should end in a period. Appropriate correction is required.

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v.*

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*Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claim 16-17 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of copending Application No. 09/621,226. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Note that claim 9 of copending S.N. 09/621,226 claims a guide block assembly comprising a unitary member defining a plurality of fiber bores and at least one guide pin bore, the fiber bores being created by an EDM process, and further wherein the fiber bores are interconnected by a first channel which is filled to segregate the fiber bores.

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-11, 16 and 18-23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of copending Application No. 09/612,226. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-5 and 16 are fully encompassed by the

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scope of copending claim 9 of S.N. 09/621,226, and because a skilled artisan would have been motivated to provide the fiber bore length:diameter ratios as claimed in order to optimize the support for the bore forming pin, a skilled artisan would have been motivated to provide the open cavity behind the fiber bore as is known in the art in order to form a support ridge in the molded ferrule, a skilled artisan would have been motivated to provide a non-rectilinear front face surface in the guide block assembly in order to mold a conventional ferrule having a non-rectilinear surface, and a skilled artisan would have been motivated to provide longitudinal slots around the fiber bore as is known in the art in order to reduce the insertion force of the pins into the bores while maintaining a tight fit.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 9 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 21 are indefinite in the use of “behind”, since no point of reference has been set forth in the claims to define exactly where “behind” is located.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-5 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Sakurai et al. (U.S. Patent 6,340,247; Figures 7-9; col. 15, lines 4-30).

Sakurai et al. teach a unitary guide block assembly 114 having fiber bores 117 and guide pin bores 116, wherein the bores are formed by an EDM process, the bores being spaced from each other and being spaced from edges of the guide block assembly. With regard to the product-by-process limitations in claims 2-5, the guide block assembly of Sakurai et al. is the same as the product guide block assembly of the claims, even though the fiber bores may have been formed by a different process. Note that determination of patentability is based on the product apparatus itself, *In re Brown*, 173 USPQ 685, 688, and the patentability of a product does not depend on its method of production, *In re Pilkington*, 162 USPQ 145, 147; see also *In re Thorpe*, 227 USPQ 964 (CAFC 1985). Note also that it is Applicant's burden to prove that an unobvious difference exists, *In re Marosi*, 218 USPQ 289, 292-293 (CAFC 1983), and Applicant must show that different methods of manufacture produce articles having inherently different characteristics, *Ex parte Skinner*, 2 USPQ2d 1788. See MPEP § 2113.

13. Claims 1-5 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Yang (U.S. Patent 6,342,170).

Yang teaches a unitary guide block assembly 60 having fiber bores 95 and guide pin bores 85, the bores being spaced from each other and being spaced from edges of the guide block assembly. With regard to the product-by-process limitations in claims 1-5, the guide block assembly of Yang is the same as the product guide block assembly of the claims, even though the fiber bores may have been formed by a different process. Note that determination of patentability is based on the product apparatus itself, *In re Brown*, 173 USPQ 685, 688, and the patentability of a product does not depend on its method of production, *In re Pilkington*, 162 USPQ 145, 147; see also *In re Thorpe*, 227 USPQ 964 (CAFC 1985). Note also that it is Applicant's burden to prove that an unobvious difference exists, *In re Marosi*, 218 USPQ 289, 292-293 (CAFC 1983), and Applicant must show that different methods of manufacture produce articles having inherently different characteristics, *Ex parte Skinner*, 2 USPQ2d 1788. See MPEP § 2113.

14. Claims 1-5 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Katsura et al. (U.S. Patent 6,287,017; Figures 8-9).

Katsura et al. teach a unitary guide block assembly 103 having fiber bores 131 and guide pin bores 140, the bores being spaced from each other and being spaced from edges of the guide block assembly. With regard to the product-by-process limitations in claims 1-5, the guide block assembly of Katsura et al. is the same as the product guide block assembly of the claims, even though the fiber bores may have been formed by a different process. Note that determination of patentability is based on the product apparatus itself, *In re Brown*, 173 USPQ 685, 688, and the patentability of a product does not depend on its method of production, *In re Pilkington*, 162 USPQ 145, 147; see also *In re Thorpe*, 227 USPQ 964 (CAFC 1985). Note also that it is

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Applicant's burden to prove than an unobvious difference exists, *In re Marosi*, 218 USPQ 289, 292-293 (CAFC 1983), and Applicant must show that different methods of manufacture produce articles having inherently different characteristics, *Ex parte Skinner*, 2 USPQ2d 1788. See MPEP § 2113.

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

17. Claims 6-8, 10, 18-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Sakurai et al. (U.S. Patent 6,340,247; Figures 7-9; col. 15, lines 4-30), Yang (U.S. Patent 6,342,170) and Katsura et al. (U.S. Patent 6,287,017; Figures 8-9).

Each of Sakurai et al., Yang and Katsura et al. disclose the guide block assembly substantially as claimed, except for explicitly disclosing the Length:Diameter ratio of the fiber bores, and except for disclosing a non-rectilinear front face surface. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify any one of



Sakurai et al., Yang and Katsura et al. by providing the L:D ratio within the claimed ranges, without undue experimentation, in order to optimize the support for the bore forming pin. Moreover, with regard to the non-rectilinear front face surface, ferrules having non-rectilinear surfaces are known in the art, and therefore it would have been obvious to a skilled artisan to have provided the molding front face of the guide block assembly with a corresponding non-rectilinear surface in order to produce a molded ferrule having a conventional non-rectilinear surface.

18. Claims 9 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Sakurai et al. (U.S. Patent 6,340,247; Figures 7-9; col. 15, lines 4-30), Yang (U.S. Patent 6,342,170) and Katsura et al. (U.S. Patent 6,287,017; Figures 8-9), in view of Eriksen et al. (U.S. Patent 5,441,397; Figures 3a-3b).

Each of Sakurai et al., Yang and Katsura et al. disclose the guide block assembly substantially as claimed, except for a cavity behind the fiber bores. Eriksen et al. disclose a guide block assembly having a cavity 21, 22 formed behind the fiber bores. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify any one of Sakurai et al., Yang and Katsura et al. by providing a cavity behind the fiber bores, as disclosed in Eriksen et al., in order to provide a cavity for the resin and thereby form a support ridge in the molded ferrule product.

19. Claims 11 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Sakurai et al. (U.S. Patent 6,340,247; Figures 7-9; col. 15, lines 4-30), Yang (U.S. Patent 6,342,170) and Katsura et al. (U.S. Patent 6,287,017; Figures 8-9), in view of Grinderslev et al. (U.S. Patent 5,664,039; Figure 11; col. 5, line 31 through col. 6, line 20, and col. 8, lines 1-43).

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Each of Sakurai et al., Yang and Katsura et al. disclose the guide block assembly substantially as claimed, except for a plurality of longitudinal slots formed around the fiber bore. Grinderslev et al. disclose a guide block assembly having fiber bores and guide pin bores formed by an EDM process, and further including a plurality of longitudinal slots 240 formed around the bore. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify any one of Sakurai et al., Yang and Katsura et al. by providing the fiber bores with longitudinal slots, as disclosed in Grinderslev et al., in order to reduce the insertion force of the pins into the bores while maintaining a tight fit.

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Mackey whose telephone number is 703-308-1195. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
James Mackey  
Primary Examiner  
Art Unit 1722

9/22/03

jpm  
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